

between the Senate and the House, the proceeds of which will go to the unfortunate in this State who are suffering as the result of the recent cyclones.

The resolution was read and adopted.

Adjournment.

The Senate at 4:40 p. m. o'clock on the motion of Senator Woodward, adjourned until tomorrow (Thursday) morning at 10:00 o'clock p. m.

APPENDIX.

Petitions and Memorials.

Putnam Seed & Gin Co.
Putnam, Texas.

April 29, 1927.

Hon. Archie Parr,
Austin, Texas.

Dear Mr. Parr:

Just read in this morning's Dallas News an account of the controversy between yourself and the Highway Commission and it is very interesting.

I note that Mr. Johnston says that there is no politics in their appointments, that it is strictly a question of merit and that they want to place men in charge that the people have confidence in.

You might say to Mr. Johnston how much confidence have the people in their assistant engineer T. H. Webb, who after the Bankhead Highway had been contracted through Callahan County and called for rock screenings to bind the rock, that he permitted contractors to substitute white clay instead and come before the court and certified that they had put rock on road when they had not put a yard of rock on the road. They collected rock prices for, or \$1.75 cents per yard, and the clay that they used could have been put on the road for 38 cents. There is no guess work about this as I was with the Highway Department at the time and was placing gravel on road in Coleman County for 38, and what could be done there could have been done in Callahan County.

Judge Ely, member of commission now, was district judge at the time this happened and called the grand jury in and gave them a special

charge on this question and told them that the State and county had been swindled and that they should investigate, and if they did not indict some one they would not do their duty. Eleven out of the twelve said they knew what was going on, but they did not indict anyone. Now Judge Ely says he was the one that got this man Webb on the job, that it was left up to him and he placed him as assistant engineer. You may use this information in any way you care to, as we can substantiate every word by the records and as many as fifty men as good as the State of Texas affords. On with the battle, pour it on them. Let me know what you think of this.

Yours truly,
J. S. YEAGER.

Two petitions signed by numerous citizens of Gainesville, Texas, opposing the tobacco tax.

A petition signed by numerous citizens of the Fifteenth Senatorial District (Senator Russek's) opposing the tobacco tax.

Committee on Engrossed Bills.

Committee Room.

Austin, Texas, May 11, 1927.

Hon. Barry Miller, President of the Senate.

Sir: We, your Committee on Engrossed Bills, have had S. B. No. 2 carefully examined and compared, and find the same correctly engrossed.

WESTBROOK, Chairman.

Committee Room.

Austin, Texas, May 11, 1927.

Hon. Barry Miller, President of the Senate.

Sir: We, your Committee on Engrossed Bills, have had S. B. No. 3 carefully examined and compared, and find the same correctly engrossed.

WESTBROOK, Chairman.

FOURTH DAY.

Senate Chamber,

Austin, Texas,

May 12, 1927.

The Senate met at 10 o'clock a. m. pursuant to adjournment, and was called to order by Lieutenant Governor Barry Miller.

The roll was called, a quorum be-

ing present, the following Senators answering to their names:

Berkeley.	Neal.
Bowers.	Parr.
Fairchild.	Price.
Floyd.	Real.
Greer.	Reid.
Hall.	Russek.
Hardin.	Smith.
Holbrook.	Stuart.
Lewis.	Triplett.
Love.	Ward.
McFarlane.	Westbrook.
Miller.	Wood.
Moore.	Woodward.

Absent.

Witt.

Absent—Excused.

Bailey.	Pollard.
Bledsoe.	Wirtz.

Prayer by the Chaplain.

Pending the reading of the Journal of yesterday, the same was dispensed with on motion of Senator Woodward.

Petitions and Memorials.

(See Appendix.)

Committee Reports.

(See Appendix.)

Senate Bill No. 4.

The Chair laid before the Senate on the Calander the following bill:

S. B. No. 4, A bill to be entitled "An Act making appropriations for the State Government for two years beginning September 1, 1927, and ending August 31, 1929, and for other purposes and prescribing certain regulations and restrictions in respect thereto; and declaring an emergency."

The bill was read second time.

Senator Bowers sent up the following amendment:

Amendment No. 1 to Senate Bill No. 4.

Amend Senate Bill No. 4, page 2, line 21, by striking out the figures 2,5,000.00—275,000.00 and inserting 265,000.00—265,000.00 and by changing the totals accordingly.

The amendment was read and failed to be adopted by the following vote:

Yeas—3.

Bowers.	McFarlane.
Greer.	

Nays—23.

Berkeley.	Price.
Fairchild.	Real.
Floyd.	Reid.
Hall.	Russek.
Hardin.	Smith.
Holbrook.	Stuart.
Lewis.	Triplett.
Love.	Ward.
Miller.	Westbrook.
Moore.	Wood.
Neal.	Woodward.
Parr.	

Absent.

Witt.

Absent—Excused.

Bailey.	Pollard.
Bledsoe.	Wirtz.

Senator Bowers sent up the following amendment:

Amend Senate Bill No. 4, page 3, by placing between lines 29 and 30 the following:

"If any State Ranger shall accept private or public employment while in service of the State he shall turn his fees or salary from such employment into the State Treasury to the general fund provided this shall not apply to rewards."

The amendment was read and adopted.

Senator Wood sent up the following amendment:

Amend Senate Bill No. 4, Page 2, by inserting between lines 16 and 17, the following:

"Collector of historical data for Adjutant General's Office; to be filled by Carl L. Estes at \$1,500.00 per year."

The amendment was read and adopted.

Senator Wood sent up the following amendment:

Amend Senate Bill No. 4, Page 4, by inserting between Lines 15 and 16 of the printed bill the following:

Provided, that any employee of the Department appointed to carry on the work of eradicating citrus canker shall be an expert with at least five years experience in citrus canker eradication work.

The amendment was read and adopted.

Senator Wood sent up the following amendment:

Amend Senate Bill No. 4, Page 5, by inserting between lines 10 and 11, the following:

"Additional inspectors, two, \$3,000.00 each year."

The amendment was read and adopted.

Senator Wood sent up the following amendment:

Amend Senate Bill No. 4, Page 5, line 27, by striking out the figures \$4,000.00 for each year and inserting in lieu thereof the figures \$6,000.00 each year.

The amendment was read and adopted.

Senator Wood sent up the following amendment:

Amend Senate Bill No. 4, Page 6, line 5, by striking out the figures \$3,000.00 for first year and inserting in lieu thereof the figures \$6,000.00 for first year.

The amendment was read and adopted.

Senator Bowers sent up the following amendment:

Amendment No. 7 S. B. No. 4.

Amend Senate Bill No. 4, page 6, line 22 by striking out the figures, 48,000.00—48,000.00 and inserting the figures 40,000.00—40,000.00 and by changing the totals accordingly.

The amendment was read.

Senator Fairchild sent up the following substitute.

Substitute for Amendment No. 7, Senate Bill No. 4.

By Fairchild:

Amend S. B. No. 4, page 6, by striking out Line 19 after the words assistants attorney general to line 22 inclusive and insert in lieu thereof "Provided no assistant attorney general shall be paid less than \$2400 nor more than \$6,000 per year."

The substitute was read and adopted.

The amendment as substituted was adopted by the following vote:

Yeas—18.

Fairchild.	Moore.
Greer.	Neal.
Hall.	Parr.
Hardin.	Price.
Holbrook.	Reid.
Love.	Russek.
McFarlane.	Smith.

Stuart.
Triplett.

Westbrook.
Wood.

Nays—7.

Berkeley.
Bowers.
Floyd.
Lewis.

Miller.
Real.
Ward.
Witt.

Absent.

Woodward.

Absent—Excused.

Bailey.
Bledsoe.

Pollard.
Wirtz.

Recess.

The Senate at 11:45 a. m., on the motion of Senator Stuart recessed until this afternoon at 2:00 o'clock p. m.

After Recess.

The Senate was called to order by Lieutenant Governor Miller at 2:00 o'clock p. m., pursuant to recess.

Simple Resolution No. 11.

Senator Ward sent up the following resolution:

By Ward, Triplett, Neal:

WHEREAS, Miss Kate Daffin, a distinguished publicist, author and a worker in the cause of maintaining the organization of the Daughters of the Confederacy is now in the Capitol Building.

THEREFORE, Be it resolved that she, be, and is cordially invited by the Senate to address the Senate now in Session.

The resolution was read and adopted.

Address by Miss Kate Daffin.

The Chair appointed Senators Ward, Neal and Triplett to escort Miss Kate Daffin to the rostrum.

Senator Ward introduced Miss Daffin, who briefly addressed the Senate.

Message From the House.

The Chair recognized the Door-keeper, who introduced a messenger from the House with the following message:

Hall of the House of Representatives,
Austin Texas, May 12, 1927.
Hon. Barry Miller, President of the Senate.

Sir: I am directed by the House to inform the Senate that the House has passed the following resolution:

S. C. R. No. 1, Requesting State Departments to close for the ball game between the Senate and the House.

Respectfully submitted,

M. LOUISE SNOW,

Chief Clerk, House of Representatives.

Simple Resolution No. 12.

Senator Wood sent up the following resolution:

By Wood:

WHEREAS there are not sufficient typewriter desks for the enrolling room and other employees of the Senate.

THEREFORE, Be it resolved that the Sergeant-at-Arms be authorized and he is hereby directed to purchase three additional desks, to be paid for out of contingent expense fund of the First Called Session of the 40th Legislature.

The resolution was read and adopted.

Senate Bill No. 14.

On the motion of Senator Woodward S. B. No. 14 was ordered printed in the Journal.

(See Appendix.)

Senate Bill No. 4.

The question recurred upon the consideration of Senate Bill No. 4.

Senator Lewis sent up the following amendment:

Amend Senate Bill No. 4, page 10, line 31, by striking out the figures 2,750.00 in each column and insert in lieu thereof 3,350.00 in each column.

The amendment was read.

Senator Bowers moved to table the amendment.

The motion to table prevailed.

Senator McFarlane sent up the following amendment:

By striking out \$3,000 in each column and inserting in lieu thereof \$2,250 in each column, line 26, page 13.

The amendment was read.

Senator Bowers sent up the following amendment to the amendment.

Amendment No. 1 to Amendment No. 8, Senate Bill No. 5.

Amend the Amendment by striking out figures 2,250.00—2,250.00 and making it 1,800.00—1,800.00.

The amendment to the amendment was read and failed to be adopted.

The amendment by Senator McFarlane was adopted.

Senator McFarlane sent up the following amendment:

By striking out \$14,400. in both columns, line 32, page 13 and inserting in lieu thereof \$12,000. in both columns.

The amendment was read and tabled on the motion of Senator Wood.

Senator McFarlane sent up the following amendment:

By striking out \$3,600 in both columns and inserting in lieu thereof \$2,400. both columns, line 12, page 14.

The amendment was read and adopted.

Senator McFarlane sent up the following amendment:

Amend S. B. No. 4, by striking out \$4,000 both columns, line 13 page 15, and insert in lieu thereof \$3,000.00 both columns.

The amendment was read and failed to be adopted.

Senator McFarlane sent up the following amendment:

By striking out \$3,000. both columns, line 14, page 15, and inserting in lieu thereof \$2,400. in both columns.

The amendment was read.

Adjournment.

The Senate at 3:00 o'clock p. m., on the motion of Senator McFarlane adjourned until 10:00 o'clock Monday morning.

APPENDIX

Petitions and Memorials.

GENERAL LAND OFFICE.

Austin, Texas, May 10, 1927.

To The Senate:

In compliance with your simple resolution adopted during your recent Regular Session, I went to the Big Bend County on the Rio Grande River, about 115 miles south of Alpine, Brewster County, and briefly looked over a portion of the area alleged to be a petrified forest. Time forbade as full investigation of the entire area as is necessary to determine the extent and existence of other evidence said to be there indicating the boundaries of petrified substances.

The particular spot that I visited and on which it is claimed there is evidence of large petrified trees both standing and fallen is probably on a small area of unsurveyed and unsold school land lying between older surveys, but upon which I was informed had been filed on for mineral purposes. No record of that filing yet appears on the records of the Land Office. Its area can be determined only by a survey, though it will be only a few hundred acres.

To my eye there was no evidence of petrified trees, but rather it appeared as if there had been an upheaval in the long ago and since then gradual erosion has left standing the more enduring substances and also disclosed breaks in the earth by some called dykes and by others faults. One eminence that stands out above the others is called Castolon and from which a near by Post Office at the home of Mr. Wayne Cartledge takes its name. This gentleman has a 175 acre farm irrigated from the Rio Grande River, on which he raises about a bale of cotton per acre.

Some half dozen miles away toward the Chisos Mountains stands out prominently Mule Ear Peak. Mt. Emory, the pinnacle of the Chisos group, stands nearly 9,000 feet. Though it has not quite the elevation of Guadalupe Mountain in Northern Culberson County, it rises perhaps highest above the adjacent surrounding plain.

In the Big Bend Country of Brewster County is some wonderful scenery. Gorges, canyons, and chasms measure some two thousand feet deep. Sunshine upon the variegated coloring of the marbled walls reflects rays that mingle with reflection from fragments of ores colored according to their kind produce a transcendent beauty.

In the side of one of the so called petrified trees was a formation quite different and entirely distinct from its surrounding substances. About three feet above the surrounding crumbled rocks and receding into the body of a large rock or tree was embedded a substance some seven feet high and some four feet wide in the middle that had the form of a heart. It was of a light red or pink color, streaked with white that gave it the appearance of marbled beef. It was encased in an ashen colored layer of mortar about four inches thick. The mortar has now dried and looks like

coarse clay. The heart consists of mingled light red or pink and white about one half inch thick and takes the concave form of the rounded heart. Near by is the impression of another that has fallen out and left an oval form as if the heart had been placed there by human hands when all the substance were soft mortar.

This locality is further south than Galveston on the Gulf. It is hot in summer but delightful in winter.

Such Texans as are accustomed to seek beauty in summer or winter out of our State could profitably spend a few vacations in the Western part of their home state.

A few samples illustrative of the substances found near Castolon are submitted herewith.

Perhaps a geologist can say what his science thinks they are.

Respectfully,
J. S. ROBISON,
Commissioner.

Committee Reports.

Austin, Texas, May 12, 1927.

Hon. Barry Miller, President of the Senate.

We, your Committee on Criminal Jurisprudence, to whom was referred

S. B. No. 14, A bill to be entitled "An Act amending Section 3a of Chapter 274 of the General Laws of the Regular Session of the 40th Legislature, so as to insert therein a saving clause in reference to offenses committed before said act takes effect so that Section 3a as amended shall read as follows:

"Section 3a. In all cases tried under the provisions of this Act, it shall be the duty of the court to define 'malice aforethought' and shall apply that term by appropriate charge of the facts in the case and shall instruct the jury that unless from all the facts and circumstances in evidence the jury believes the defendant was prompted and acted with his malice aforethought, they cannot assess the punishment at a period longer than five years; provided, however, that no offense committed prior to the taking effect of Chapter 274 of the General Laws of the 40th Legislature of 1927, shall be affected thereby, whether an indictment has been returned or not, but in every such case the offender may be proceeded against and punished under the law as it existed prior to the taking effect of said act, the same as if said act had not been passed."

Have had same under consideration and I am instructed to report the same back to you with the recommendation that it do pass, and be printed in the Journal.

Woodward, Chairman, McFarlane, Fairchild, Wood, Miller, Holbrook, Bledsoe.

S. B. No. 14 By Woodward.

A BILL
To Be Entitled

An Act amending Section 3a of Chapter 274 of the General Laws of the Regular Session of the 40th Legislature, so as to insert therein a saving clause in reference to offenses committed before said act takes effect so that Section 3a as amended shall read as follows:

'Section 3-a. In all cases tried under the provisions of this Act, it shall be the duty of the court to define 'malice aforethought' and shall apply that term by appropriate charge of the facts in the case and shall instruct the jury that unless from all the facts and circumstances in evidence the jury believes the defendant was prompted and acted with his malice aforethought, they cannot assess the punishment at a period longer than five years; provided, however, that no offense committed prior to the taking effect of Chapter 274 of the General Laws of the 40th Legislature of 1927, shall be effected thereby, whether an indictment has been returned or not, but in every such case the offender may be proceeded against and punished under the law as it existed prior to the taking effect of said act, the same as if said act had not been passed.'

And declaring an emergency.

Be It Enacted by the Legislature of The State of Texas:

Section 1. Section 3a of Chapter 274 of the General Laws of the Regular Session of the 40th Legislature of 1927, be and same is hereby amended so as to hereafter read as follows:

'Section 3-a. In all cases tried under the provisions of this Act, it shall be the duty of the court to define 'malice aforethought' and shall apply that term by appropriate charge to the facts in the case and shall instruct the jury that unless from all the facts and circumstances

in evidence the jury believes the defendant was prompted and acted with his malice aforethought, they cannot assess the punishment at a period longer than five years, provided, however, that no offense committed prior to the taking effect of Chapter 274 of the General Laws of the 40th Legislature of 1927, shall be affected hereby whether an indictment has been returned or not, but in every such case the offender may be proceeded against and punished under the law as it existed prior to the taking effect of said act, the same as if said act had not been passed.'

Section 2. The fact that Chapter 274 of the Acts of the 40th Legislature of the State of Texas for 1927 does not contain a saving clause so as to provide for the trial of offenders against the law of murder and manslaughter being tried under the law in force at the time of the taking effect of said Act and because persons being prosecuted for manslaughter at the time of taking effect of said Act, may be released if a saving clause is not provided in said Act, creates an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended and said rule is hereby suspended and this Act will take effect and be in force from and after its passage and it is so enacted.

FIFTH DAY.

Senate Chamber,
Austin, Texas,

Monday, May 16, 1927.

The Senate met at 10 o'clock a. m., pursuant to adjournment, and was called to order by President pro tem Pollard.

The roll was called, a quorum being present, the following Senators answering to their names:

Bailey.	Moore.
Berkeley.	Neal.
Bledsoe.	Pollard.
Fairchild.	Price.
Floyd.	Real.
Greer.	Reid.
Hall.	Smith.
Hardin.	Triplett.
Holbrook.	Ward.
Lewis.	Westbrook.
Love.	Wirtz.
McFarlane.	Witt.
Miller.	Wood.